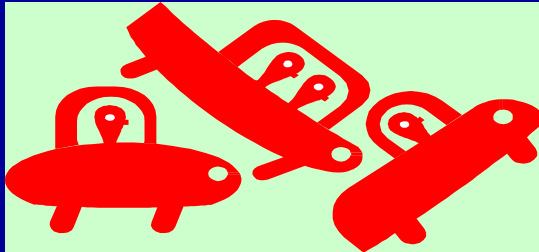


# DOT ACCIDENT LITIGATION

2006 INCIDENT MANAGEMENT  
CONFERENCE

WILMINGTON NORTH  
CAROLINA

AUGUST 21-25, 2006



# Litigation

## Industrial Commission

### Tort Claim

- Filing of Affidavit with I.C. Begins Suit

## Superior Court

### Civil Action Against Individual

- Service of Summons on Individual Begins Suit

# Who Is The Defendant?

- TORT CLAIM

DOT IS THE  
DEFENDANT

- SUPERIOR COURT

INDIVIDUAL  
EMPLOYEE IS THE  
DEFENDANT

# ATTORNEY GENERAL REPRESENTS DEFENDANTS IN BOTH TYPES OF ACTIONS

## Industrial Comm. Tort Claim

AG Defense is  
Automatic

## Superior Court

- Must be written request by defendant for representation
- AG may refuse to defend
- No defend No pay
  - On your own

# ANSWER TO COMPLAINT

- 30 DAYS TO FILE AN ANSWER
  - May be defaulted if fail to answer

# Discovery

## Interrogatories

- Written questions answered under oath
- 30 days to answer
- Penalties for failure to respond

## Depositions

Oral questions under oath

Plaintiff can set the time and place

May subpoena and request records

# TRIAL

- INDUSTRIAL COMMISSION

– BENCH TRIAL

- GENERAL COURT OF JUSTICE  
SUPERIOR COURT

– JURY TRIAL

# BENCH TRIAL

- Before a Deputy Commissioner
  - Plaintiff has burden of proof
  - Defendant presents his/her case at close of plaintiff's case
  - Less formal than jury trial; you may not know the results for several months
  - Appeal is to the Full Commission



# JURY TRIAL

- Less common than Industrial Commission trial
- More complex and will require more preparation time.
- Verdict will be known at the end of the trial
  - Appeal is to the Court of Appeals

# Liability

\$500,000.00

per claimant

# COMMUNICATION

- IMMEDIATE NOTIFICATION OF ACCIDENT AND SERVICE OF COMPLAINT
- QUICK RESPONSE TO AND FROM AG ON INFORMATION REQUESTS
- YOU ARE ENTITLED TO KNOW WHAT IS HAPPENING WITH YOUR CASE AT ALL TIMES
- NO SURPRISES

**NORTH CAROLINA  
DEPARTMENT OF JUSTICE  
TORT CLAIMS SECTION**

**9001 MAIL SERVICE CENTER  
RALEIGH, N.C. 27699  
PHONE 919-716-6820  
FAX 919-716-6759**